85-1170

No. ____

Supreme Court, U.S.
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JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1985

BAY RIDGE COMMUNITY COUNCIL, INC., et al.,

Plaintiffs-Appellants,

—v.—

HUGH L. CAREY, et al.,

Defendant-Appellees.

In the Matter of the Petition of

ROBERT P. WHELAN,

Petitioner-Appellant,

CLARANCE P. RAPPLEYEA,

Intervenor-Appellant

ON APPEAL FROM THE COURT OF APPEALS
OF THE STATE OF NEW YORK

RESPONSE OF APPELLEE, ROBERT P. WHELAN, TO JURISDICTIONAL STATEMENT OF INTERVENOR-APPELLANT, CLARANCE P. RAPPLEYEA

ROBERT P. WHELAN, *pro se*
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STATEMENT

ROBERT P. WHELAN, pro se, appellee, pursuant to Rule 10.2 of the Rules of the Supreme Court of the United States, supports the position of appellant, Clarence P. Rappleyea.

Pursuant to Rule 34.2 of the Rules one addendum is made to question presented by said appellant. In pages A8-A9 of said appellant's jurisdictional statement the Appellate Division, affirmed by the New York Court of Appeals, rejected the mandate of the New York State Constitution, Article 5, paragraph 4 that the New York City Council should have redrawn the districts as it had always done, Matter of Richardson, 307 N.Y. 269 citing Matter of Orans, 15 N.Y. 2d 339, 351-352, following WMCA, Inc. v. Lomenzo, 377 U.S. 633.

In WMCA, Inc., footnote 12, Justice Warren alludes to the Article without comment.

Yet in Orans, Judge Desmond said it "must go by the board". This article was not something adopted thoughtlessly, but was the subject of debate in the New York State Constitutions of 1848, 1867, 1894 and the convention in 1967.

Article 1 Sec. 2 of the New York State Constitution states that the right to a jury trial shall "remain inviolate forever".

Can a state, even a sovereign state, decide that it does not like jury trials and hold that, because of some comment by the Supreme Court (even an uncritical comment) that jury trials should "go by the board"?

The situation here is the more serious because both legislature and judiciary (and executive too) seem to have acted in concert.

Otherwise, the jurisdictional statement of appellant, Rappleyea, is unimpeachable and appellee concurs in the same in all respects.

With due respect no table of contents and authorities is submitted pursuant to Rule 33.5, this document not exceeding three pages.

CONCLUSION

The case should be set for hearing.

Respectfully submitted,

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